

REMARKS

- (1) A Request for Continued Examination has been requested with the appropriate Transmittal Letter (PTO/SB/30 (02-09)) and filed on even date herewith.
- (2) Claims 1-11 and 13-17 are pending in this Application. Claim 12 was previously cancelled.
- (3) New claims 18-23 have been appended hereto.
- (4) Claims 1, 18 and 21 are independent.
- (5) Claims 2-17 have been amended hereby. The amendments made are not substantive in nature, but serve to more clearly describe the subject of the claim.
- (6) The Examiner has indicated that: "The objection to claims 3 and 5 for minor informalities is withdrawn in view of Applicants' amendment."
- (7) The Applicants respectfully propose that with the Amendments made hereinabove to the Claims, together with the Remarks contained hereinbelow, this Application is in condition for allowance; and, notice to that effect is earnestly solicited hereby.

Administrative

It should be noted that the attorneys associated with Customer No. 28752 are newly associated with this Application. The Applicants respectfully request that the Examiner amend the record to reflect the new Attorney Docket No.: **BRYER.P019** noted herein.

Nature of the Examination

In submitting this Response to the Final Office Action, together with the Request for

Continued Examination (RCE), the Applicants are relying on the completeness of the Examiner's action as per 37 CFR § 1.104(a)(1), which states that:

On taking up an application for examination ... the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the claimed invention. The examination shall be complete with respect both to compliance of the application ... with the applicable statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated.

and on § 1.104(b), which states in part that:

The examiner's action will be complete as to all matters, ...

Rejection under 35 USC §103

(1) The Examiner has rejected claims 1-7, 9-11, 13-15 and 17 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 7,125,828 for Detergent Products, Methods And Manufacture, issued October 24, 2006 to Catlin et al. (hereinafter referred to as "*Catlin*").

(1)(a) With respect to claims 1-7, 9-11, 13-15 and 17, in making the rejection, the Examiner has stated that:

Catlin teaches a water-soluble pouch which comprises a plurality of compartments in generally superposed or superposable relationship, for example, the plurality of compartments can be symmetrically arranged one above another, side by side (such that they can be folded into a superposed relationship) or any other convenient disposition provided that the compartments are superposable in use, each containing one or more detergent active or auxiliary components (see abstract; col. 3, lines 53-59).

The Applicants respectfully submit that while the above statement with respect to the teaching of *Catlin* is included, it only relates to the Applicants' claimed invention with respect to being water-soluble and nothing more. While the plurality of compartments within the pouch of *Catlin* are generally superposable, the Applicants' claimed invention can be limited to one chamber; or, there can be a plurality of distinctly formed chambers which are *not superposed* upon each other. (Applicants' claim 1).

Additionally, in furthering the rejections, the Examiner has stated that:

Water soluble film of different thickness can be used to obtain differential dissolution under in-use conditions (see col. 5, lines 62-64; col. 19, lines 57-61). Rectangular pouches inherently have regions of different film thickness on the film and this can contribute to improve the dissolution profile of the pouch (see col. 7, lines 42-45).

The Applicants respectfully submit that the Examiner is mis-applying the literal teachings of *Catlin* with respect to differing film thickness. *Catlin*, in referring to inherent differing thickness, offered up the unsubstantiated statement quoted by the Examiner, nothing more. *Catlin* appears to be referring to the manufacturing process wherein thin spots might occur in the production of certain films; yet, *Catlin* offers no evidence that the thin spots occur in all processes, or that that the “inherent differing thickness” occurs in the production of anything other than rectangular pouches. Additionally, *Catlin*, again without a clear teaching of “how,” has indicated that the differing thickness, possibly inherent to the manufacturing process, “can contribute to improve the dissolution profile of the pouch”; but again, *Catlin* has offered no teaching nor explanation of how that improvement is actually made. And, further, *Catlin* has offered no explanation of how a “flaw” in the manufacturing process, that leads to “thin spots,” can be controlled (or enabled). The lack of control over the inherent production of the thin spots of *Catlin*, is evidence enough that controlled production of thin regions, as claimed by the Applicants, is patently distinct over *Catlin* and contrary to the argument raised by the Examiner.

Further, in making the rejections, the Examiner has stated that:

In the process of making the pouch, *Catlin* teaches that the film can be held with grips or clips on the edges of the surface where there are no moulds (see col. 22, lines 16-22).

The Applicants respectfully submit that the Examiner is taking the teaching of *Catlin* completely out of context so as to make the teaching of *Catlin* fit the claims of the Applicants. The context within which *Catlin* is utilizing clips is to secure the film utilized to make the pouches to a surface. The “surface” that *Catlin* is referring to is a conveyor belt, not the surface of the pouch or the compartment. Indeed *Catlin* states that:

The process used herein for forming the first and/or second moving webs involves continuously feeding a water-soluble film onto an endless surface ... (*Catlin* at col. 19, lines 50-52). The term 'endless surface' as used herein, means that the surface ... is preferably part of a rotating platen conveyor belt comprising moulds ... (*Catlin* at col. 20, lines 8-11). Preferably the surface is part of and/or preferably removably connected to a moving, rotating belt. ... Then preferably, the surface can be removed and replaced with another surface ... (*Catlin* at col. 20, lines 50-55). The surface ... are [sic] preferably made from corrosion resistant material ... Preferred may be that the surface or platens, including the mould areas are made of aluminum ... (*Catlin* at col. 21, lines 47-52). Once on the surface, the film can be held in position ... by any means. For example the, the film can be held with grips or clips on the edges of the surface ... (*Catlin* at col. 22, lines 16-22).

On the other hand, the Applicants teach a water-soluble container, wherein the at least part of the first wall includes at least one clip element which retains the releasable part until dissolved. (Applicants at claim 3, and at new claims 19, 22 and 23). It is clear that the clips of *Catlin* are not utilized to retain the releasable part until dissolved as is claimed by the Applicants. Indeed, as *Catlin* states: "the surface [sic] are preferably made from corrosion resistant material." The "clips" of *Catlin*, therefore are not the clips of the Applicants.

In summation, the Examiner has stated that:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the thin portion of the water soluble pouch of *Catlin* to dissolve first, thereby releasing the thick portion which reads on the panel because the water soluble pouch of *Catlin* has regions of different film thickness.

The applicants respectfully submit that the conclusion of the Examiner is based on the inherency argument discussed hereinabove with respect to the film manufacturing process. The "thin spot of the water soluble pouch of *Catlin*" is not controlled in the manufacturing process of *Catlin* as it is with the Applicants' claims herein. The mere presence of thin spots does not convey the sequential control taught and claimed by the Applicants.

Further, the Examiner has stated that:

It would also have been obvious to one of ordinary skill in the art at the time the invention was made to seal the pouch of Catlin with clips because it is shown by Catlin in col. 22, lines 16-22 that the water soluble film can be held with clips, hence, it would also be reasonable to seal it with clips because it is generally known to seal open pouches with clips.

The points referred to by the Examiner with respect to the use of “clips” is referring to non-analogous art which is concerned with the securing of a film to an endless surface, or conveyor belt, that specifically is looking to reduce corrosion. The Applicants’ claimed “clip” is clearly distinguishable over *Catlin* in that the Applicants’ clip is utilized to secure a dissolvable lid with a dissolvable clip.

The Supreme Court in *KSR International v. Teleflex Inc.* (“*KSR*”) determined that:

The key to supporting any rejection under 35 USC 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 USC 103 should be made explicit. The Court quoting *In re Kahn* stated that ‘Rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.’ (*Fed Reg.*/Vol. 72, No. 195; Oct. 10, 2007; pp. 57528-9).

One of the permissible rationales defined by the USPTO, as a result of *KSR*, was rationale (G), further defined as “Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention”. (*Fed Reg.*/Vol. 72, No. 195; Oct. 10, 2007; pp. 57529). Presumably, this is the rationale chosen by the Examiner in the instant rejection (no others apply) because of the reference to: “It would have been obvious to one of ordinary skill in the art ...”.

The USPTO determined that to reject a claim based on the “G” rationale:

“... Office personnel must resolve the Graham factual inquiries. Office personnel must then articulate the following:

- (1) a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
- (2) a finding that there was reasonable expectation of success; and
- (3) whatever additional findings based on the graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

The rationale to support a conclusion that the claim would have been obvious is that 'a person of ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention and that there would have been a reasonable expectation of success.' If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art. (*Fed Reg.*/Vol. 72, No. 195; Oct. 10, 2007; pp. 57534).

As has been discussed hereinabove, Catlin does not teach the selective thinning of the Applicants; and, the clips of Catlin are clearly not the clips of the Applicant. Based on the "G" rationale, the Examiner has not met the burden defined therein; and, therefore, the rationale cannot be used to support, or supply support for a conclusion that the claims would have been obvious to one of ordinary skill in the art. The *prima facie* burden has not been established.

The Applicant respectfully submits that they have traversed in part, and overcome in part, the Examiner's rejection of claims 1-7, 9-11, 13-15 and 17 under 35 USC 103(a) as being unpatentable over *Catlin*.

(1)(b) The Examiner has rejected claims 8 and 16 under 35 USC 103(a) as being unpatentable over *Catlin* as applied to the above claims, and further in view of U.S. Patent No. 6,484,879 for a Water Soluble Packaging System And Method, issued November 26, 2002 to Desmarais et al. (hereinafter referred to as "*Desmarais*").

As to dependent claims 8 and 16, the Applicants respectfully submit that claims 8 and 16 enjoy the allowability of their parent claim 1 as is discussed in the Remarks hereinabove. Thus, there is no motivation to combine the methods of *Desmarais* with the pouch of *Catlin* to achieve what the Applicants have claimed as their invention. And, therefore, the Examiner's rejection of claims 8 and 16 under 35 USC 103(a) as being unpatentable over *Catlin* in view of *Desmarais* has been traversed.

(2) Based on the Remarks made hereinabove, the Applicants respectfully submit that they have traversed the rejection by the Examiner of claims 1-11 and 13-17 under 35 USC 103(a).

(3) New claims 18-23 have been appended so as to more fully claim what the Applicants regard as the invention.

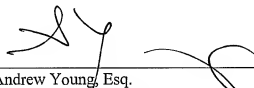
Conclusion

Applicant respectfully submits that claims 1-11 and 13-23 are allowable for at least the reasons noted hereinabove. A Notice of Allowance is therefore respectfully requested hereby.

The Commissioner is hereby authorized to charge any fees which may be necessary for the consideration of this communication, or any additional fees required during examination of this application, and to credit any overpayment to Deposit Account No. 10-0100 (Attorney Docket No. BRYER.P019).

Respectfully Submitted

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Date



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